

Minutes of a meeting of the Legal Services Board (LSB) on 22 October 2015

Date: 22 October 2015
Time: 13.00 -15.00
Venue: Office of Rail and Road, One Kemble Street, London

Present: Sir Michael Pitt Chairman
(Members) Richard Moriarty Chief Executive
 Terry Babbs
 Anneliese Day QC (from item 6)
 David Eveleigh
 Marina Gibbs
 Helen Phillips

In attendance: Robert Cross Research Manager (item 8)
 Meghan Eyre Regulatory Associate
 Jenny Hart Business Planning Associate (items 9-13)
 Nick Glockling Legal Director
 Paul Greening Regulatory Associate (items 5-6)
 Edwin Josephs Director of Finance and Services
 Julie Myers Corporate Director
 Dawn Reid Head of Regulatory Performance and Operations (items 5-6)
 Caroline Wallace Strategy Director
 Kate Webb Head of Regulatory Reviews and Investigations (item 7)
 Adewale Kadiri Corporate Governance Manager (minutes)

Item 1 – Welcome and apologies

1. The Chairman welcomed those present and in attendance to the meeting, in particular, Meghan Eyre who was attending as an observer. There were no apologies.

Item 2 – Declarations of interests relevant to the business of the Board

2. There were no declarations of interest.

Item 3 – Items considered out of committee since 8 September 2015

3. The Board noted that the Finance report for August 2015 had been circulated electronically to members on 23 September 2015.

Item 4 – Update on legislative review

4. Caroline Wallace introduced this paper, the purpose of which was to update the Board on recent developments in this area. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [FOIA exempt s36(2)(c)] The Board was asked to endorse the creation of a shadow LSB project team in anticipation of its launch.
5. The following points were raised in the course of the discussion:
 - [REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt s36(2)(c)]
 - Professor Stephen Mayson would be invited to assist in articulating the LSB's vision for a future legal regulatory framework, to build on the July paper on legislative options, which was the product of cross-regulator discussions. It would also be an opportunity to assess how far LSB thinking has progressed since the publication of the Blueprint document. Professor Mayson would expect to engage with the Board, and a paper will be presented at the November meeting to provide further details on this work. It was suggested that, in parallel, the LSB should work up some scenarios for future developments to 2025 or 2030, taking account of social, technology and demographic issues, against which the LSB's ideas for the future regulatory framework could be sense-checked.
 - Some progress is being made with MoJ on the regulators' joint suggestions for reducing regulatory burdens.
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [FOIA exempt s36(2)(c)]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [FOIA exempt s36(2)(c)]

- 6. The Board noted the recent developments on legislative reform, and agreed to endorse the actions proposed in response to these developments.**

Item 5 – Paper (15) 50 Review of Practising Fee Rules 2009

7. Dawn Reid introduced this item. The existing rules have been in place since 2009, and so it is timely to review, but an additional trigger for starting this review now has been The Law Society's (TLS) intention to use income from activities funded by practising certificate fee (PCF) income for non-permitted purposes. TLS is firmly of the view that the Act does not prohibit it from doing this.
- 8. The Board noted and agreed with the plan to review the Practising Fee Rules 2009.**

Item 6 – Paper (15) 51 Solicitors Disciplinary Tribunal (SDT) Budget 2016

9. Dawn Reid introduced this paper, reminding the Board that the Legal Services Act requires that the LSB approves the SDT's budget. The SDT is proposing a budget of £2.9m for 2016/17, which is a 5.6% increase on the budget for 2015/16. As is required by the Act, TLS has been consulted on the budget, and it has indicated that it is content with it.
10. The following points were raised by way of background:
- The Board were reminded that any underspend on the SDT budget is recovered by TLS, and deducted from future PCF payments.
 - It is thought unlikely that the underspend in 2016 would be as high as it had been in previous years, as the Tribunal is now receiving a higher number of, and more complex, cases. It was also noted that the SDT is now receiving better information from the SRA to aid its planning.
 - The LSB executive had expressed its concerns about the 5.6% increase, and had asked the SDT to reconsider, but it had returned with the same figure, and with some further information to justify it. Based on the feedback from the Law Society, it was recommended to the Board that the budget proposal be accepted.
11. In the course of the discussion, the following further points were made:
- The Board were of the view that a lower budget could have been submitted, as the proposal includes a £55k contingency, £45.7k had been set aside for ABS appeals and a £200k underspend was predicted.
 - As to the reason for the increase in cases, it was explained that in 2011, there had been a shift at the SRA away from taking enforcement action against practitioners in relation to whom there were concerns, towards supervision. The cases that are now going to the SDT are those in which supervision had not proved successful. There were also a number of cases relating to some complex funding arrangements. In addition, it was

noted that more cases are being challenged, as solicitors are now more likely to be represented at SDT hearings.

- In response to the question whether the SDT is taking sufficient steps to improve productivity, it was noted that it has agreed a range of performance indicators with the LSB, and improvements are being made in meeting these. The SDT is hoping to reduce the cost per court figure, but the cost per case has gone up as a result of the increased complexity of cases.
- The Board was content to approve the budget, noting the public interest dimension to the work of the SDT and the increase in the number and complexity of cases. It was acknowledged that any underspend on the budget is ultimately returned to the profession.

12. The Board agreed to

- a) Approve the SDT's budget application of £2,908,243 for 2016, and**
- b) Communicate to the SDT, their concerns about the growing costs, making clear an expectation that these would be critically examined for future years.**

Item 7 – Paper (15) 52 LSB response to MoJ request for innovation plans

13. Kate Webb introduced this item. The Chancellor had published the Government's Productivity Plan in July 2015, and this included a commitment to work with regulators to publish innovation plans. The MoJ, for its part, has decided to produce a single innovation plan to cover the department and its regulators, to which the LSB and the approved regulators have been asked to contribute. The LSB's contribution includes findings from recent research, the work of the Consumer Panel, and facilitating the introduction of new business models and improvements to regulation.
14. The following points were made in the course of the discussion:
- That greater prominence could and should be given to LSB research in the paper and that an annex providing summaries of research referenced in the footnotes should be prepared.
 - That the LSB's role in commissioning the Consumer Panel's work should be brought out more in the paper.
 - The final paragraph of the paper could be strengthened.
- 15. The Board agreed:**
- a) With the proposed response to the MoJ, subject to the suggested enhancements, and**
 - b) To delegate approval of the final document to the Chief Executive.**

Item 8 – Paper (15) 53 Background to the market evaluation work stream

16. Robert Cross introduced this paper, taking the opportunity to update the Board on the progress that has been made on this work stream. A commitment had been made in 2012 to evaluate the delivery of market outcomes associated with the Legal Services Act once every three years. It was noted that the purpose of this evaluation is to consider whether market outcomes have improved, rather than necessarily proving a causal link between specific things the LSB has done and the state of the market. The assessment would be based on a number of sources, and although a number of other reports on this subject had been produced by others, these had tended to focus only on specific areas. The LSB, however, is uniquely placed to consider the entire market, including both regulated and unregulated services. There will be an informal Board session in January at which the early findings from this work would be presented.
17. The following points were made in the course of the discussion:
- [REDACTED].
[FOIA exempt s36(2)(c)]
 - The report would be used to highlight gaps and recommend how these would be filled in the future.
 - The question was raised as to what the LSB might expect from the approved regulators as a result of this work. A separate publication (to accompany the main report) on the implications of the market evaluation work for them should be considered.
 - It was noted that any change to the evaluation framework would probably require further consultation, as the current framework had been decided on following consultation.
18. **The Board agreed to note the background and history of the evaluation work stream.**

Item 9 – Paper (15) 54 Update on OLC performance

19. Julie Myers introduced this paper. The Board had noted the references to the OLC in the course of the MoJ Permanent Secretary's evidence to the Justice Select Committee and the subsequent media reports regarding the circumstances under which the Chief Ombudsman had left the OLC. The Board also noted that the Permanent Secretary made reference to the quality of MoJ assurance and sponsorship being found to be lacking in relation to OLC. There had been no reference to LSB in the context of this discussion.

20. In terms of OLC performance, it was noted that the timeliness figures have remained static between August and September. The Board also noted the upcoming milestones – specifically, that the monthly section 120 reporting is continuing, and in November, proposals for a new performance framework are due to be presented to the LSB. The new LeO Chief Executive is now in post, and a Chief Ombudsman appointment is about to be made.
21. The following further points were made:
- In a recent meeting, the new Chief Executive made clear his commitment to restoring both MoJ and LSB’s confidence in the OLC and in particular as regards governance and performance, [REDACTED]
[REDACTED]
[REDACTED] **[FoIA exempt s36(2)(b)(ii)]**
 - In relation to future OLC performance submissions, the Board asked the executive to ensure they came with LSB narrative on the content.
 - The Board noted the problems reported with the current LeO IT system. The close relationship between the budget and performance improvements reinforced the need for the Board to provide careful scrutiny of the OLC budget before granting approval in March.
 - There is evidence that the OLC Board is now asking the right questions of the executive, for example in challenging the robustness of figures on case volumes and the pace of ombudsman recruitment.
22. **The Board agreed**
- a) **To note the most recent performance reports**
 - b) **To an adjustment of the monthly deadline for section 120 reports from the seventh to the ninth of the month, and**
 - c) **To note the upcoming milestones in relation to its governance obligations towards OLC.**

Item 10 – Minutes of the meeting of 8 September 2015

23. The minutes of the meeting had already been agreed via electronic correspondence. It was agreed that they would be signed by the Chairman as an accurate record.

Item 11 – Report of action points

24. All actions were noted as on-track. With regard to the second bullet point on action (15) 44, the executive reported that the only work identified to date had been carried out by the Consumer Panel in 2013. The Board agreed that the OLC might reasonably be expected to include performance comparisons with other schemes as part of its justification for the new performance framework.

25. **The Board noted the updates to the report of action points, and agreed that the executive should alert the OLC to the Board's expectation that comparisons with other schemes might reasonably form part of the justification for the new performance framework.**

Item 12 – Paper (15) 55 Chief Executive's update – October 2015

Richard Moriarty presented his update report.

26. Board appointments

The Chairman had written to the Lord Chancellor to express the Board's concerns about persistent difficulties in making Board appointments over successive recruitment exercises. [REDACTED]

[REDACTED]
[REDACTED] **[FOIA exempt s36(2)(b)(ii)]**

27. Organisation development

Following the recruitment exercise for a new Chief Executive, a preferred candidate has been identified, contracts have now been signed and notice periods are being discussed. An announcement is to be made in due course.

28. MoJ sponsorship matters

The executive has worked closely with MoJ sponsor and finance teams with a view to seeking exemptions from a number of spend controls proposed by the MoJ. Two of these business cases had recently been rejected: recruitment and communications spend. [REDACTED]

[REDACTED].
[FOIA exempt s36(2)(b)(ii)] The executive was continuing to explore the implications of the MoJ's view and the Chief Executive would return to the Board before signing up to any controls.

29. OLC

The Board noted that the report commissioned from Grant Thornton by OLC and MoJ was due to be delivered by the end of October. [REDACTED]

[REDACTED] **[FOIA exempt s36(2)(b)(ii)]**

30. Regulatory standards

It was reported that this work is going well, with the larger regulators providing good quality returns. The full set of returns are scheduled to have been received by the end of October.

31. Communications and stakeholder engagement

The Board noted the success of the recent engagement with the SRA Board. Feedback from the SRA showed that it had also found the event useful. There had been an important discussion on the SRA's direction of travel, with the SRA signalling its intention to innovate. [REDACTED]

[REDACTED]
[REDACTED]

██████████. [FoIA exempt s36(2)(b)(ii)] A similar event is to be held with the BSB.

32. Statutory decisions

It was explained that the rule change application referred to at paragraph 21 may require Board approval as a result of its wider implications. The application relates to the removal of Rule 22.1 of the SRA's rule book, on the obligation on individuals and entities to deliver, or intend to deliver, reserved legal activities. Some firms may wish to become authorised on the basis that they may on occasion carry out such activities. The SRA wants to provide such businesses with the flexibility to provide reserved legal activities if they need to, thus removing the burden of unnecessary compliance, ie having to establish that they deliver, or intend to deliver, reserved legal activities. The LSB is concerned that firms that are not currently regulated and who do not need to be regulated could go down this route in order to gain the 'badge' of SRA authorisation. The executive want to give further consideration to the matter and therefore anticipate issuing a warning notice. It was noted that this decision may displease the SRA and it may decide to issue a public statement.

33. **The Board noted the contents of the Chief Executive's update.**

Item 13 – Paper (15) 56 Q2 Performance report: 1 July – 30 September 2015

34. Jenny Hart introduced this item. It was noted that all projects are on track with the exception of one that had been delayed as a result of resources being re-allocated to another project. It was also noted that a large number of section 55 requirements had been issued during this quarter mainly in relation to the regulatory standards work.

35. **The Board agreed to note the draft Q2 performance report, and that it be used as the basis for discussion with the MoJ.**

Item 14 – Paper (15) 57 Finance Report to 30 September 2015

36. Edwin Josephs introduced this routine update on LSB finances. The draft 2016/17 budget had been considered in detail by the ARAC at their recent meeting.

37. **The Board noted the content of the Finance Report.**

Item 15 – Any other business

38. None raised.

Item 16 - Date of next meeting

39. The Board would next meet on 26 November 2015 at 13.00. The venue would be the Ward Hadaway, 1A Tower Square, Wellington Street, Leeds LS1 4DL.

AK, 28/10/15

Signed as an accurate record of the meeting

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Date

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